UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,313	04/17/2001	. Cary Lee Bates	ROC920010013US1	6912

		EXAMINER
7590	06/30/2005	FISH, JAMIESON W

James R. Nock
IBM Corporation, Dept. 917
3605 Highway 52 North
Rochester, MN 55901-7829

ART UNIT	PAPER NUMBER
2617	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/836,313	BATES ET AL.
	Examiner	**Art Unit**	
	Jamieson W. Fish	2617	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *21 March 2005*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-19* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-6,9-15,18 and 19* is/are rejected.

7) ☒ Claim(s) *7-8 and 16-17* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *17 April 2005* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) ☐ Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments, see Remarks Page 8 Paragraph 4, Page 10 Paragraph 3, filed 3-21-2005 with respect to the rejections of claims **1**, **11**, and **18** under 35 U.S.C. 103 have been fully considered and the rejections have been withdrawn. However, upon further consideration, a new ground of rejection is made in view of reinterpretation of Amano and newly found prior art, Bedard (US 5,801,747). Although it is not explicitly claimed the language of claims **1, 11,** and **18,** does require that "the channel of interest" be recalled by a single activation of the select view function. However, the language of these claims does not require that "the channel of interest" is the only channel stored. The claims do not recite "a single channel of interest" as suggested by the applicant's remarks. In the previous rejection the examiner interpreted Amano as storing multiple channels of interest and that a newly stored channel was a channel of interest. Based on this interpretation multiple activations of the F key may be required to recall this channel. Because of the fact that multiple activations of the F key may be required to recall this channel the examiner relied on the well known basic channel recall function disclosed in the background Saitoh to teach a single activation of a function to recall a channel. The applicant contends this combination is not proper under 35 U.S.C. 103. Whether or not this combination is under proper 35 U.S.C. 103 is moot, based on a new interpretation of Amano which anticipates claims **1** and **11** under 35 U.S.C. 102 and claim **18** under 35 U.S.C. 103. As discussed further in the new rejections below, if the stored channel with the highest ranking, the one recalled by a single activation of the F

key, if defined as "the channel of interest" Amano anticipates the limitations of claims **1,**
11 and **18**.

Applicant's arguments with respect to claim **4-10** and **12-17** have been
considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claim **6** recites the limitation "the program of interest" in line 4. There is
insufficient antecedent basis for this limitation in the claim. The claim has been
interpreted with "channel" replacing "program."

Claim **9** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite
for failing to particularly point out and distinctly claim the subject matter which applicant
regards as the invention. Claim **9** recites the limitation of storing a "program" as "the
channel of interest." Since a program cannot be stored as a channel the claim is
indefinite. The claim has been interpreted with "channel that is broadcasting a" inserted
between "a" and "program" on line 3.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that
form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a
foreign country or in public use or on sale in this country, more than one year prior to
the date of application for patent in the United States.

2.   Claims **1-4, 11** are rejected under 35 U.S.C. 102(b) as being anticipated by

Amano et al (US 5,323,240).

3.   Regarding claim **1**, Amano teaches a method for recalling a previous channel of

programming information comprising the steps of: initializing a channel of interest (See

Col. 3 lines 24-35, It is inherent that at some point in time the channel with the highest

grade (the channel of interest) would be initialized); selecting a first channel of program

information (See Col. 3 lines 15-17); monitoring an elapsed time spent on the first

channel (See Col. 3 lines 19-20); identifying and storing the first channel as the channel

of interest if the elapsed time spent on the first channel exceeds a predetermined time

threshold (See Col. 3 lines 24-35 If the time spent watching a channel exceeded the

amount of time spent watching the highest ranked channel it will be stored as the

highest ranking channel (the channel of interest)); switching to a plurality of additional

channels, wherein the elapsed time spent on the additional channels does not exceed

the predetermined time threshold (See Col. 3 lines 36-40 Time spent watching a

channel is calculated after every channel change. Channel changes could occur such

that the time spent on any one channel did not exceed the amount of time spent

watching the highest ranked channel); and activating a selective view function to return

to the channel of interest from one of the plurality of additional channels (See Fig 4 and

Col. 3 lines 54-67, Col. 4 lines 1-7 When the F key is activated the highest ranking

channel is displayed).

4.   Regarding claim **2**, Amano teaches wherein the step of switching to a plurality of

additional channels further includes the step of storing one of the additional channels as

the channel of interest, if the amount of time spent on the one channel exceeds the

predetermined time threshold (See Col. 3 lines 24-35 If the time spent watching a

channel exceeded the amount of time spent watching the highest ranked channel it will

be stored as the highest ranking channel (the channel of interest)).

5.   Regarding claim **3**, Amano teaches the step of storing one of the plurality of

additional channels as the channel of interest upon the activation of the select view

function (See Col. 3 lines 24-35).

6.   Regarding claim **4**, Amano teaches wherein the method further includes the step

of storing historical channel access information in a channel history log (See Col. 3 lines

3-35 Memory stores amount of time watching channels).

7.   Regarding claim **11**, Amano teaches a channel selection apparatus for recalling a

previously accessed channel of interest, comprising: a receiver capable of receiving a

plurality of channels of broadcast material and a user generated channel selection

signal, wherein the channel selection signal selects one of the plurality of channels of

broadcast material (See Fig. 1 and Col. 2 lines 22-49) the receiver further comprising: a

memory (See Fig. 1 CPU 9 and Col 2 lines 31-33 A CPU is a memory) and a program

resident in memory (See Fig. 2 and Col. 2 lines 50-64 Circuitry within a CPU is a

program resident with in memory), the program configured to measure the elapsed time

spent on a selected channel (See Fig. 2, Time Counting Circuit 9a, and Col. 2 lines 52-

54); store the selected channel as a channel of interest if the selected channel exceeds

a predetermined time threshold (See Fig 2, Grade Circuit, Sort Circuit, and Memory

circuit 9b-d, and Col. 3 lines 24-35. Amano teaches that if the time spent watching a

channel exceeds the amount of time spent watching the highest ranked channel (the

channel of interest), it will be stored as the highest ranked channel); and switch to the

channel of interest from the currently selected channel upon receipt of a channel recall

signal from a selective view function (See Fig 4 and Col. 3 lines 54-67, Col. 4 lines 1-7.

When the F key is activated the highest ranking channel is displayed).

8.   Claims **1-4**, **11-13**, **15**, **18-19** are rejected under 35 U.S.C. 102(b) as being

anticipated by Bedard (US 5,801,747).

9.   Regarding claim **1**, Bedard teaches a method for recalling a previous channel of

programming information comprising the steps of: initializing a channel of interest (See

Fig. 3 and Col. 5 lines 33-58 The process starts with a channel at the top of the array);

selecting a first channel of program information (See Fig. 3 and Col. 5 lines 33-58);

monitoring an elapsed time spent on the first channel (See Fig. 3 Step 300 and Col. 3

lines 33-58); identifying and storing the first channel as the channel of interest if the

elapsed time spent on the first channel exceeds a predetermined time threshold (See

Fig. 3 Step 304 and Col. 3 lines 34-58 If the channel is viewed for a viewing unit the

channel becomes the channel at the top of the array (the channel of interest)); switching

to a plurality of additional channels, wherein the elapsed time spent on the additional

channels does not exceed the predetermined time threshold (See Fig. 3 Steps 302 and

304 and Col. 5 lines 33-58); and activating a selective view function to return to the

channel of interest from one of the plurality of additional channels (See Col. 7 lines 39-

64).

10.   Regarding claim **2**, Bedard teaches wherein the step of switching to a plurality of additional channels further includes the step of storing one of the additional channels as the channel of interest, if the amount of time spent on the one channel exceeds the predetermined time threshold (See Fig. 3 Step 304 and Col. 3 lines 34-58 If the channel is viewed for a viewing unit the channel becomes the channel at the top of the array (the channel of interest)).

11.   Regarding claim **3**, Bedard teaches the step of storing one of the plurality of additional channels as the channel of interest upon the activation of the select view function (See Fig. 3 Step 304 and Col. 3 lines 34-58 This step repeats every time a new channel is tuned).

12.   Regarding claim **4**, Bedard teaches wherein the method further includes the step of storing historical channel access information in a channel history log (See Fig. 2 and Col. 4 lines 27-48).

13.   Regarding claim **11**, Bedard teaches a channel selection apparatus for recalling a previously accessed channel of interest, comprising: a receiver capable of receiving a plurality of channels of broadcast material and a user generated channel selection signal, wherein the channel selection signal selects one of the plurality of channels of broadcast material (See Col. 3 lines 4-33) the receiver further comprising: a memory (See Col. 3 lines 57-62 A memory is inherent to software); and a program resident in memory, the program configured to measure the elapsed time spent on a selected channel (See Fig. 3 and Col. 5 lines 34-48); store the selected channel as a channel of interest if the selected channel exceeds a predetermined time threshold (See Fig. 3 and

Col. 5 lines 34-68); and switch to the channel of interest from the currently selected

channel upon receipt of a channel recall signal from a selective view function (See Col.

7 lines 39-64).

14.   Regarding claim **12**, Bedard teaches wherein the program is further configured to

store a program guide for tracking the start and stop times of programming material

currently being broadcast on the plurality of channels (See Fig. 5 and Col. 7 lines 39-

64).

15.   Regarding claim **13**, Bedard teaches wherein the program is further configured to

store a user history of program material accessed by a user of a predetermined time

(See Fig. 2 and Col. 4 lines 27-48).

16.   Regarding claim **15,** Bedard teaches wherein the program is further configured to

initially set the channel of interest to a channel that has historically been of interest in

the current time slot (See Fig. 3 and Col. 5 lines 34-48 At step 300 (initialization) the

channel at the top of the array (the channel of interest) is last channel to be viewed

longer than one time unit. Thus, this channel has historically been of interest in the

current time slot).

17.   Regarding claim **18**, Bedard teaches a program product comprising: a program

configured to measure an elapsed time spent on a selected channel (See Fig. 3 and

Col. 5 lines 34-48), store the selected channel as a channel of interest if the selected

channel exceeds a predetermined time threshold (See Fig. 3 and Col. 5 lines 34-68),

and switch to the channel of interest from a currently selected channel upon receipt of a

channel recall signal (See Col. 7 lines 39-64); and a signal bearing medium bearing the

program (See Col. 3 lines 57-63 A signal bearing medium is inherent to software).

18.   Regarding claim **19**, Bedard teaches wherein the signal bearing medium includes

at least one of a transmission medium and a recordable medium (See Col. 3 lines 57-63

Software is read from medium (transmission) and written to medium(recordable)).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

19.   Claims **5-6**, **9-10,** and **14** is rejected under 35 U.S.C. 103(a) as being

unpatentable over Bedard in view of Saitoh (US 5,564,088).

20.   Regarding claims **5** and **6**, Bedard does not disclose resetting the channel of

interest at the completion of a program. In a similar endeavor, Saitoh teaches having

channels prioritized for time slots according to past user viewing habits during the time

slot and having a function which allows the user to tune to high priority channels for

each time slot (See Col. 3 lines 46-67, Col. 4 lines 1-23, and Col. 5 lines 24-36). Thus,

Saitoh teaches changing which channels have priority during each time slot. It would

have been obvious to one of ordinary skill in the art at the time the invention was made

to modify Bedard so that the channel of interest was reset with a channel of historical

interest as identified by the channel history log as taught by Saitoh to provide a

broadcast signal channel selecting apparatus which selects a channel that is commonly

viewed at a particular time and day of the week (See Saitoh Col. 2 lines 15-18).

21.   Regarding claim **9**, Bedard modified with Saitoh teaches wherein the step of initializing a channel of interest includes the step of storing a channel that is broadcasting a program that has historically been of interest in the current time slot as the channel of interest (See Bedard Fig. 3 and Col. 5 lines 34-58 When the user changes to a new channel if the previously accessed channel was viewed longer than one viewing unit (broadcasting a program that has historically been of interest) it is stored as the channel at the top of the array (channel of interest)).

22.   Regarding claim **10**, Bedard modified with Saitoh teaches wherein the method of initializing a channel of interest includes the step of storing the channel that was last accessed during the time slot as the channel of interest (See Bedard Fig. 3 and Col. 5 lines 34-58 When the user changes to a new channel if the previously accessed channel was viewed longer than one viewing unit it is stored as the channel at the top of the array (channel of interest)).

23.   Regarding claim **14**, Bedard fails to disclose wherein the program is further configured to replace the channel of interest with a new channel that has historically been of interest in the current time slot, if the program guide indicates that the program on the current channel of interest has ended. In a similar endeavor, Saitoh teaches having channels prioritized for time slots according to past user viewing habits during the time slot and having a function which allows the user to tune to high priority channels for each time slot (See Col. 3 lines 46-67, Col. 4 lines 1-23 and Col. 5 lines 24-36). Thus, Saitoh teaches changing the channel of interest when a time slot (program) ends. It would have been obvious to one of ordinary skill in the art at the time

the invention was made to modify Bedard so that the channel of interest was replaced

with a new channel that has historically been of interest in the current time slot, if the

program guide indicates that the program on the current channel of interest has ended

as taught by Saitoh to provide a broadcast signal channel selecting apparatus which

selects a channel that is commonly viewed at a particular time and day of the week

(See Saitoh Col. 2 lines 15-18).

24.   Claim **18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Amano.

25.   Amano teaches a program product comprising a program (See Fig. 2 and Col. 2

lines 50-64 Circuitry within a CPU is a program), configured to measure the elapsed

time spent on a selected channel (See Fig. 2, Time Counting Circuit 9a, and Col. 2 lines

52-54); store the selected channel as a channel of interest if the selected channel

exceeds a predetermined time threshold (See Fig 2, Grade Circuit, Sort Circuit, and

Memory circuit 9b-d, and Col. 3 lines 24-35. Amano teaches that if the time spent

watching a channel exceeds the amount of time spent watching the highest ranked

channel (the channel of interest), it will be stored as the highest ranked channel); and

switch to the channel of interest from the currently selected channel upon receipt of a

channel recall signal from a selective view function (See Fig 4 and Col. 3 lines 54-67,

Col. 4 lines 1-7. When the F key is activated the highest ranking channel is displayed).

Amano differs from the claimed invention in that his program is not necessarily

contained on a signal bearing medium. However, Official Notice is taken that it is well

known to use a signal bearing medium as an alternative to circuitry to embody a

program. Thus, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to modify Amano so that his program was embodied on a signal

bearing medium since software is more versatile than hardware.

26.   Claim **19** is rejected under 35 U.S.C. 103(a) as being unpatentable over Amano

in view of Meadows (US 4,060,839).

27.   Regarding claim **19**, Amano fails to teach a signal bearing medium that includes

at least one of a transmission medium and a recordable medium. Signal bearing

mediums that include at least one of a transmission medium and a recordable medium

are well know in the art, such a floppy disc disclosed by Meadows (See Col. 1, lines 8-

12). It would have been obvious to one of ordinary skill in the art to further modify

Amano to store a program product on a signal bearing medium that included at least

one of a transmission medium and a recordable medium, as taught in Meadows. One

would have been motivated to do so, in order to allow distribution of a program product

to be more convenient.

Allowable Subject Matter

28.   Claims **7-8** and **16-17** are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

29.   Regarding claims **7-8,** in a similar endeavor Ismail et al. (US 6,614,987) teaches

where a time threshold used to store program information may be variable depending

on user preferences (See Col. 10 lines 63-67, Col. 11 lines 1-26). However, Ismail's

system does not necessarily lengthen/shorten the time threshold if the first channel is

broadcasting a seldom/frequently viewed program as determined by the channel history log.

30.   Regarding claims **16-17,** in a similar endeavor Ismail et al. (US 6,614,987) teaches where a time threshold used to store program information may be variable depending on user preferences (See Col. 10 lines 63-67, Col. 11 lines 1-26). However, Ismail's system does not necessarily lengthen/shorten the time threshold if the first channel is a seldom/frequently viewed channel as determined by the channel history log.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamieson W. Fish whose telephone number is 571-272-7307. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary ~~supervisor~~, Ngoc Vu can be reached on 571-272-7320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JF
6/24/04

NGOC-YEN VU
PRIMARY EXAMINER